

Constitutional Discussion of Justice in the Context of Respecting the Defendants' Rights

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Abstract

The relevance of the study is determined by the need for clear mechanisms in order to exercise of the defendants' rights in social reality. The aim of the study is to determine the effectiveness of the systems for observing the defendants' constitutional rights in criminal proceedings in Germany, France, Italy, the USA, and Japan. The study applied a comprehensive methodological approach to achieve the goal. The method of formal logic was used for a systematic study of the provisions of the constitutions of Germany, France, Italy, the USA and Japan regarding the protection of the rights of the accused. Through the application of the comparative law method, a comparison of the systems of guaranteeing the rights of the defendants in the indicated states was carried out, which made it possible to identify common trends and specific national differences in the mechanisms of their implementation. The method of legal hermeneutics made it possible to take into account the complex nature of the interaction of the individual, society and the state in the field of criminal justice when interpreting legal norms. The results of the study were substantiated position that the analysed provisions in the constitutions of Germany, France,

Italy, Japan, and the USA have significant differences. At the same time, it can be recognized that the constitutions of these countries contain common and important provisions on the defendants' rights and freedoms. The scientific novelty of the study lies in the comprehensive comparative analysis of the mechanisms for implementing the constitutional rights of the accused within different legal families, which allowed us to identify the correlation between national legal traditions and the effectiveness of judicial protection in modern conditions. Unlike traditional approaches, the paper argues for the role of criminal justice not simply as a tool of protection, but as a dynamic system that requires constant adaptation to the challenges of digitalization and harmonization with international standards. It is proven that the effectiveness of constitutional guarantees directly depends on the balance between state coercion and individual freedom in the context of the development of the global legal space. The academic novelty of this study lies in its shift from a purely descriptive analysis of constitutional norms to a functional assessment of how these rights are exercised in social reality. Unlike previous research that focuses on isolated jurisdictions, this work provides a synthesized typology of defendants' rights, categorizing them by the source of law, the subject of execution, and the specific stage of the trial process. Further research may focus on studying the forms of exercising the defendants' rights.

Keywords

Criminal Proceedings, Fundamental Rights, Constitutional Principles, Criminal Procedure Code, International Legal Norms.

HOW TO CITE:

Chicago Manual of Style Footnote:

- ¹ Liliana Catan, Alexandru Sosna, Iurie Frunză, Serghei Zaharia, and Lilia Stefu, "Constitutional Discussion of Justice in the Context of Respecting the Defendants' Rights," *Journal of Law and Legal Reform* 7, no 2 (2026): 489-516, <https://doi.org/10.15294/jllr.v7i2.22733>.

Chicago Manual of Style for Reference:

Catan, Liliana, Alexandru Sosna, Iurie Frunză, Serghei Zaharia, and Lilia Stefu. "Constitutional Discussion of Justice in the Context of Respecting the Defendants' Rights." *Journal of Law and Legal Reform* 7, no 2 (2026): 489-516. <https://doi.org/10.15294/jllr.v7i2.22733>.

Introduction

The justice system is a fundamental element of a democratic state, ensuring the implementation of the rule of law and the protection of citizens' rights and freedoms. The issue of respecting the rights of the accused in criminal proceedings remains a subject of active debate in the scientific community, as confirmed by numerous studies. In particular, Stoykova's scientific research focuses on the impact of digital evidence and digital forensics on the standards of a fair trial in new conditions. Alazzam emphasizes the challenges of globalization and the impact of new technologies on the development of legal systems. Goss's study reveals the practice of the ECHR on the right to free legal assistance under Article 6 of the Convention, emphasizing the unconditional nature of this right. In addition, Burdziej's work demonstrates the role of procedural justice in ensuring the legitimacy of the court and preserving democratic institutions. Dachak made an important contribution to the development of the problem of proportionality of punishment and its compliance with the ideological values of society. The relevance of this study is due to the need to find a balance between the effectiveness of justice and the inviolability of constitutional guarantees of the individual in the context of digital transformation and the growth of crime. The significance of the work lies in conducting a comprehensive comparative analysis of the mechanisms for protecting the rights of the accused in leading legal systems (Germany, France, Italy, the USA and Japan), which allows developing recommendations for harmonizing national legislation with international standards. The study creates a basis for improving procedures for protection against unjustified criminal prosecution and provides a theoretical basis for future legislative reforms.

The justice system is a fundamental element of a democratic state, which ensures the implementation of the principle of the rule of law, the protection of citizens' rights and freedoms, as well as compliance with fair trial standards. One of the key aspects of the effectiveness of the judiciary is respecting the defendants' rights, which is an integral part of constitutional guarantees of human rights.

The relevance of this issue is due to the need to ensure a balance between the rights of defendants and the efficiency of justice, which includes the guarantees of a fair trial, equality of arms, the presumption

of innocence and protection against false accusation. At the same time, despite the presence of general theoretical developments, there is a lack of comprehensive comparative studies in modern literature that would analyze the practical implementation of these constitutional guarantees simultaneously in countries of both the Romano-Germanic and Anglo-American legal families, as well as in the specific legal system of Japan. This work fills the indicated scientific gap, focusing on identifying specific discrepancies between the declarative norms of constitutions and the real mechanisms of their implementation in the context of modern challenges, such as the digitalization of the criminal process and the adaptation of national procedures to dynamic standards of international law.

The constitutional and legal aspects of this problem remain in the focus of researchers' attention, legislators and human rights organizations, as violation of the defendants' rights can lead to miscarriages of justice, restrictions on access to justice, and other negative consequences for the legal system of the state.¹

A significant role in the constitutional discussion of justice is played by judicial practice, in particular the practice of the European Court of Human Rights (ECHR), the recommendations of the Council of Europe (CE) and the standards of the United Nations (UN). Accordingly, an important task of the study is to analyse the compliance of national judicial systems with international standards, assess the effectiveness of mechanisms for protecting the defendants' rights.

The aim of this study is to critically assess the effectiveness of national and international mechanisms for protecting the rights of the accused within the framework of the modern constitutional discourse on justice. Unlike previous investigations, the main focus is on identifying the determinants that cause discrepancies between the normative content of constitutional guarantees and their practical implementation in the courts of Germany, France, Italy, the USA and Japan. Achieving the goal involves analyzing the impact of international standards and modern

¹ Uche Nnawulezi, Jacques Kabano, Fadhel Arjuna Adinda, Dorcas Adesola Thanni, and Mary-Ann Onoshoke Ajayi. 2025. "An Analysis of Indonesian Administration of Criminal Legislation As Instrument of Restorative Justice for Prisoners". *Indonesian Journal of Criminal Law Studies* 10 (1): 280. <https://doi.org/10.15294/ijcls.v10i1.23946>.

challenges, in particular the digitalization of the process, on the transformation of the content of the fundamental rights of defendants.

The study is based on the analysis of international standards, constitutional practice, and court decisions, which gives grounds to assess the effectiveness of the current justice system from the perspective of ensuring the defendants' rights.

The aim was achieved through the fulfilment of the following research objectives:

1. Study the constitutional foundations of justice in the context of respecting the defendants' rights.
2. Analyse international standards and their impact on the national judicial systems of Germany, France, Italy, the USA, and Japan.
3. Assess the effectiveness of national mechanisms for the legal protection of defendants.

So, the study is aimed at a comprehensive analysis of the problem, which has both theoretical and practical significance, as its results can be used in human rights activities, legislative work, and judicial practice.

The research methodology is based on descriptive and comparative-analytical approaches to the study of constitutional principles of justice. The paper uses the method of formal logic for a critical analysis of the legal norms of Germany, France, Italy, the USA and Japan, which allowed to systematize the guarantees of the rights of the accused in different legal families. The theoretical basis of the analysis is the concepts of procedural justice and the rule of law, and the normative basis is the provisions of national constitutions, criminal procedure codes and case law of international judicial institutions.

Data collection and processing were carried out through qualitative analysis of legal texts and scientific doctrine, which allowed interpreting the complex relationships between the state and the individual through the prism of legal hermeneutics. The limitations of the study are due to the focus on five specific jurisdictions and the emphasis on the constitutional level of protection, which leaves out a detailed consideration of secondary legislation. Such a methodological design provides a holistic understanding of how universal human rights standards adapt to specific national legal orders.

The study consisted of three stages. The first stage provided for the selection of studies on the chosen topic, as well as legal acts regulating relations in the outlined area. At the second stage, the provisions of the constitutions and criminal procedure codes of Germany, France, Italy, the USA and Japan were analysed to identify common and distinctive characteristics in the system of observing the defendants' rights. At the third stage, the conclusions of the study were drawn, and its results were compared with the studies of other researchers to identify areas for further studies.

The study employed the following special methods: formal logic, comparative law, and legal hermeneutics.

The method of formal logic was applied for a systematic analysis of the structure and content of constitutional guarantees in the five jurisdictions studied. In particular, through the operation of logical analysis and synthesis, complex constitutional norms were decomposed into separate elements (the right to defense, the right to silence, the right to a fair trial) for their detailed study and further integration into a holistic model of protecting the rights of the accused. Using the deductive method, the general principles of justice enshrined in international acts were projected onto specific norms of the national constitutions of Germany, France, Italy, the USA and Japan to verify their compliance. In addition, a logical operation of comparison was applied, which made it possible to establish the relationship of identity and differences between the legal constructs of different states, ensuring the consistency and validity of conclusions regarding the effectiveness of the legal systems studied.

The comparative law was used to study the systems of ensuring and protecting the defendants' rights in Germany, France, Italy, the USA, and Japan, their comparison, and the identification of common and distinctive features. The method of legal hermeneutics was used in order to take into account the complex nature of the interaction of the individual, society, and the state in the field of criminal justice when conducting the study.

In order to achieve the objectives, 83 studies on the selected topic were selected using the Science Direct service, of which 41 sources were identified and analysed. The sources were selected according to the following criteria:

- a. relevance of the topic (the studies directly related to constitutional justice and respect for the defendants' rights, as well as covering modern challenges in this area);
- b. time frame – articles published in the last 5 years were selected to ensure the relevance of the studies and compliance with modern legal trends;
- c. methodological framework – the studies contained a clear methodology for assessing the effectiveness of mechanisms for protecting the defendants' rights (empirical analysis, comparative approach, analysis of case law, etc.);
- d. geographical coverage – articles analysing legal systems that are relevant to this study were included (namely, countries such as Germany, France, Italy, the USA, and Japan);
- e. authority of sources – preference was given to publications in highly rated journals, as well as studies by authors with well-known scientific contributions in the field of justice and constitutional law;
- f. practical significance – those works were selected that not only theoretically analyse the problem, but also offer specific recommendations or analyse real cases of judicial practice.

A person and his or her rights should be a priority in the system of economic, political, and legal relations, as well as in the system of observance of the defendants' rights. It was concluded that the function of law as a regulator of the rights and interests of citizens, including defendants, should remain unchanged at all stages of social development. It is important to take into account social innovations associated with the digitalization of all spheres of life, including their impact on criminal justice. A similar opinion is held by of Stoykova², who argues that digital evidence and digital forensics have a significant impact on criminal investigations. This situation requires a review of whether the principles of fair trial are applied in the new conditions and how this affects the rights of the accused. A similar position is supported by Alazzam, who notes that the unprecedented growth of the influence of academic

² Radina Stoykova, "The right to a fair trial as a conceptual framework for digital evidence rules in criminal investigations", *Computer Law & Security Review* 49, (2023): 105801. <https://doi.org/10.2139/ssrn.4232504>.

achievements and new technologies characterizes the current era of globalization and all spheres of society, including the justice system and protection of the defendants' rights³.

The policy of developing the rule of law in Eastern Europe, reflected in the Criminal Procedure Code, has led to a change in priorities in this area from the perspective of respecting the defendant's rights. In the results of his research, Basoeky⁴ confirms this opinion and notes that the inconsistency between the content of the rights of suspects and the accused provided for in the Criminal Procedure Code and the provisions of the Basic Law of the state contradicts the principles of justice, protection of human dignity, order and legal certainty for a law-based state.

The study by Goss⁵ is interesting, who explored the ECHR case law on the right to a fair trial under Article 6 of the European Convention on Human Rights (ECHR) and, in particular, the right to legal aid in criminal proceedings. The researcher concluded that Article 6 is an unconditional right; despite the justification of the public interest, it provides the Government with numerous opportunities to protect the defendant. A similar position is supported and developed by Ortynskyi, who notes that the constitutional right to protection is granted to all participants in criminal proceedings, and the constitutional right to protection is one of the most important guarantees of protecting citizens from unjustified criminal prosecution. This principle serves as a kind of lever for the formation of a new social and legal consciousness⁶.

³ Farouq Ahmad Faleh Alazzam, Hisham Shakhatreh, Zaid Ibrahim Yousef Charaibeh, Iryna Didiuk, Oleksandr Sylkin, "Developing an information model for e-commerce platforms: A study on modern socio-economic systems in the context of global digitalization and legal compliance", *Ingénierie des systèmes d'information* 28, no. 4 (2023): 969–974. <https://doi.org/10.18280/isi.280417>

⁴ Superior Basoeky, "The reformulation of criminal procedure law against the rights of suspects and defendants in the perspective of the criminal justice system", *Ratio Legis Journal* 1, no. 4 (2022): 1015–1029.

⁵ Ryan Goss, "The disappearing 'minimum rights' of Article 6 ECHR: The unfortunate legacy of Ibrahim and Beuze", *Human Rights Law Review, Forthcoming*, ANU College of Law Research Paper No. 23.6 (2023). <http://dx.doi.org/10.2139/ssrn.4541954>

⁶ Volodymyr Ortynskyi, "Regarding compliance with national standards for ensuring individual rights to protection in accordance with international

The correct opinion is presented in the study of Burdziej that civility as a civic virtue plays an important role in democratic politics and public life in general, contributing to the preservation of democratic institutions and encouraging social interaction, despite discrepancies in views⁷. The importance of the interaction of human rights and society is emphasized by Lamakh in his study, who notes that the restriction of the defendant's constitutional rights should be aimed at achieving a reasonable compromise between social requirements and individual interests⁸.

Compliance with the principle of proportionality is one of the fundamental requirements of justice in all matters related to the imposition of punishment, which aims to ensure that the size of the punishment corresponds to the severity of the crime committed by the offender. As Dachak rightly notes, the proportionality of crime and punishment is a variable and relative issue, as well as a kind of function of the ideology and values that govern society⁹.

Issues such as sexual orientation, defamation, hate speech, and homelessness are key to the debate on the (de)criminalization of human rights. The concept of the “sword and shield of human rights” continues to explain the intensification of criminal law, but human rights do not always provide simple conclusions regarding criminalization, and their full application to criminal law is often controversial¹⁰. Furthermore,

standards”, *Bulletin of Lviv Politechnic National University. Law Sciences Series* 11, no. 41 (2024): 1-7. <https://doi.org/10.23939/law2024.41.001>

⁷ Stanisław Burdziej, Keith Guzik and Bartosz Pilitowski, “How civility matters in civil matters: Procedural justice and court legitimacy in the midst of a legitimacy crisis”, *Law & Social Inquiry* 47, no. 2 (2021): 558–583. <https://doi.org/10.1017/lsi.2021.42>

⁸ Konstantin Lamakh and Valerii Kolesnyk, “The issue of compliance with individual rights when using the results of secret investigative (search) actions”, *Uzhhorod National University Herald. Series: Law* 5, no. 86 (2025): 80–86. <https://doi.org/10.24144/2307-3322.2024.86.5.11>

⁹ Hadi Dachak, “The principle of proportionality of crime and punishment in international documents”, *International Journal of Multicultural and Multireligious Understanding* 8, no. 4 (2021): 684. <https://doi.org/10.18415/ijmmu.v8i4.2661>

¹⁰ Steven Malby, “Beyond sword and shield: The UN human rights system and criminal law”, *The International Journal of Human Rights* (2024): 1–24. <https://doi.org/10.1080/13642987.2024.2432953>

Marynych develops this idea and notes that de(criminalization) should not affect the effectiveness of the exercise of the rights and legitimate interests of a person in criminal proceedings or to waive their rights and legitimate interests in the shortest possible time during pre-trial proceedings¹¹.

One of the most important in criminal proceedings is to determine compliance with the principle of proportionality is one of the fundamental requirements of justice in all matters related to the imposition of punishment, which aims to ensure that the size of the punishment corresponds to the gravity of the crime committed by the offender. This principle is the logical basis of punishment and a factor in its legality. The principle of proportionality is determined by the need to ensure the rights and freedoms of other people and the interests of society, and must fully comply with the provisions of the Basic Law of a particular country and their guarantees of security and protection provided for by this law.¹²

It is undeniable that a fair trial is the cornerstone of justice in any liberal democracy, and it provides fundamental guarantees in the judicial system, including due process and equality before the law. It is summarized that human rights are currently the most important factor determining the purpose, content and form of procedural activities in criminal proceedings, a benchmark for a civilized criminal process, an indicator characterizing the degree of observance of fundamental human rights and freedoms. It is worth noting that, on the other hand, the growth of crime and the need to strengthen the fight against it are used as motivation to simplify the judicial process by taking measures and actions that restrict human rights and freedoms.

¹¹ Olha Marynych, "The concept of effectiveness of ensuring the rights and legal interests of a person in pre-trial criminal proceedings", *Visegrad Journal on Human Rights* 1 (2024): 56–63. <https://doi.org/10.61345/1339-7915.2024.1.9>

¹² Anis widyawati, Dian Latifiani, Helda Rahmasari, and Ade Adhari. 2024. "Optimizing Oversight: Developing an Ideal Framework for Supervision Prisoners' Rights Allocation". *Indonesian Journal of Criminal Law Studies* 9 (2): 185–206. <https://doi.org/10.15294/ijcls.v9i2.36628>.

Result & Discussion

The researchers, courts, and individuals often use different ways to define what constitutes human rights and how to define their boundaries. The defendant's rights are a many-sided, complex, and integrated system that includes the norms of the Constitution, criminal procedural law, and other branches of law, civil and civil procedure administrative, and financial legislation (Table 1).

The list in this table is not exhaustive, not only because of its geographical limits, but also because the constitutional principles of the judiciary's activities in protecting the defendants' rights reflect the cultural, historical, socio-economic, political, and legal features of each state, as well as universal human rights standards. Any law adopted by a state in the US cannot contradict the Federal Constitution of the United States. With regard to criminal law, state constitutions have certain similarities and differences with the federal constitution. The similarity is usually clearly defined above-mentioned constitutional provisions. The differences is that they may contain more detailed provisions or provisions that are not included in the Constitution¹³.

In general, a common feature of all US state constitutions is that their provisions pay considerable attention to punishment. This concerns the purpose of punishment, the type of punishment, and the method of its execution. From the perspective of protecting the rights of the accused, the Japanese Constitution provides for a pardon procedure and five types of amnesty, two of which are amnesty by decree and personal amnesty. Despite this, pardons are in any case applied by decision of the Cabinet of Ministers of Japan¹⁴.

Among the institutions of the Kosovo legal system that are obliged to protect the rights of the accused, the Constitutional Court plays an important role, as it is the protector of the rights of the defendants in

¹³ Zia Akhtar, "Double jeopardy, autrefois acquit and the legal ethics of the rule against unreasonably splitting a case", *Criminal Justice Ethics* 43, no. 1 (2024): 103-121. <https://doi.org/10.1080/0731129X.2024.2325795>

¹⁴ Dimitri Vanoverbeke, "Protecting the script of the Japanese criminal justice system", *Law & Social Inquiry* 47, no. 2 (2022): 734-740. <https://doi.org/10.1017/lsi.2022.5>

accordance with the case-law of the ECHR¹⁵. A similar position is supported by the Netherlands, where criminal procedure system takes human rights seriously. In cases where fundamental human rights in criminal proceedings are not sufficiently enshrined in national law, the application of international human rights standards by the Dutch courts often ensures the proper balance of these rights.

A comparative analysis of the defendants' rights and the guarantees for their exercise in terms of constitutional provisions shows significant variability in the approaches of different countries to ensuring the defendants' fundamental rights. Despite common basic principles, such as the presumption of innocence, the prohibition of torture and the right to a fair trial, there are significant differences between countries in the mechanisms for ensuring these guarantees.

In particular, some constitutions, such as those of Germany and the US, contain clearly defined provisions on the prohibition of retroactive effect of law and excessive punishments, while in France and Italy the emphasis is on the principle of equality before the law and personal responsibility. In turn, Japan attaches special importance to the prohibition of torture and the humanity of punishment. This indicates that constitutional provisions are not only legal norms, but also a reflection of the historical and socio-cultural features of the legal systems of the respective states.

A key problem that the comparative analysis reveals is the level of practical implementation of constitutional guarantees. While the US and Germany have strong mechanisms of judicial control over the observance of the defendants' rights, other countries may have certain difficulties with the effectiveness of judicial protection, especially in cases of the use of emergency measures or national security restrictions.

¹⁵ Adelina Rakaj, "The protection of the rights of the defendant by the constitutional court - the Kosovo case", *Nagari Law Review* 3, no. 2 (2020): 1. <https://doi.org/10.25077/nalrev.v.3.i.2.p.1-13.2020>

TABLE 1. Comparative analysis of defendants' rights and guarantees of their observance in terms of constitutional provisions

Country	Provisions of the Constitution relating to criminal justice
Germany	Provisions on the retroactive effect of the law, on the inadmissibility of punishment multiple times for the same act, on the admissibility of deprivation of liberty only on the basis of the law and by court decision, on the abolition of the death penalty
France	Provisions on pardon by the President, on the absence of criminal liability solely for expressing one's own thoughts, views and beliefs, the principles of equality before the law and the rule of law, the presumption of innocence
Italy	Principles of legality, equality, punishability of a criminal offence, personal responsibility and humanity of punishment, prohibition of extradition for political crimes and in other cases provided for by international conventions
USA	Provisions on the prohibition of the issuance of laws with retroactive effect, the application of cruel and unusual punishments, deprivation of life, liberty and property without lawful trial
Japan	Principles of legality and equality before the law, prohibition of the use of torture by public officials and cruel criminal penalties. The retroactive effect of the law provides for an exception if the law mitigates the penalty

Source: developed by the authors based on ^{16,17,18,19,20,21,22,23,24,25,26,27,28,29,30}

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- ¹⁶ Philipp Osten and Takashi Kubota, “Impact on domestic criminal law—German experiences with universal jurisdiction and immunity”, In *Global impact of the Ukraine conflict*, 493-508. Singapore: Springer Nature Singapore, 2023. https://doi.org/10.1007/978-981-99-4374-6_23
- ¹⁷ Setegn Fentahun et al., “Antisocial personality disorder and determinants among prisoners in South Gondar zone correctional institutions, Northwest Ethiopia: An institution-based cross-sectional study”, *International Journal of Law and Psychiatry* 97 (2024): 102018. <https://doi.org/10.1016/j.ijlp.2024.102018>
- ¹⁸ Ahmad Ateeq Al Dhaheri et al., “Electronic monitoring in the criminal justice system of the UAE & France”, In 2022 international Arab conference on information technology (ACIT). IEEE (2022). <https://doi.org/10.1109/acit57182.2022.9994099>
- ¹⁹ Susan J. Terrio, “The French criminal justice system”, In *Judging Mohammed: Juvenile Delinquency, Immigration, and Exclusion at the Paris Palace of Justice*, 38-54. Redwood City: Stanford University Press, 2009. <https://doi.org/10.1515/9780804771030-004>
- ²⁰ Marina Mancini, “Italy and international criminal justice: Mapping the present and charting the path ahead”, *International Criminal Law Review* (2024): 1–14. <https://doi.org/10.1163/15718123-bja10202>
- ²¹ Giovanna Palermo, “Conflict and crime. Restorative justice in Italy”, *Frontiers in Sociology* 8 (2023). <https://doi.org/10.3389/fsoc.2023.1175291>
- ²² David Garland, “The current crisis of American criminal justice: A structural analysis”, *Annual Review of Criminology* 6, no. 1 (2022): 43-63. <https://doi.org/10.1146/annurev-criminol-030722-035139>
- ²³ Dean J. Champion, *Dictionary of American criminal justice*, Oxfordshire: Routledge, 2020. <https://doi.org/10.4324/9781315062006>
- ²⁴ Kubo Mariko, “Modern Chinese law from the perspective of Japanese legal academics: a discussion on criminal justice”, *Chinese Studies in History* 55, no. 4 (2022): 304. <https://doi.org/10.1080/00094633.2022.2135320>
- ²⁵ Amal Abuanzeh, “The rationale for detention in the Jordanian Code of criminal procedure: A comparative study with French law”, *Heliyon* 8, no. 10 (2022): 11164. <https://doi.org/10.1016/j.heliyon.2022.e11164>
- ²⁶ France. *Texte intégral de la Constitution du 4, octobre 1958 en vigueur* [Constitution]. 1958.
- ²⁷ Italy. *Constitution of the Italian Republic*. [Constitution]. 1948.
- ²⁸ Deutschland. *Grundgesetz für die Bundesrepublik Deutschland*. [Constitution]. 1949.
- ²⁹ The United States of America. *The Constitution of the United States*. [Constitution]. 1787.
- ³⁰ Japan. *Japan’s Constitution of 1946*. [Constitution]. 1946.

The analysis of the defendants' fundamental rights at the stage of trial reveals that their implementation largely depends on the regulatory framework of each country, the role of the court in the criminal proceedings, and ensuring procedural equality of the parties (Table 2):

TABLE 2. The defendants' fundamental rights in criminal proceedings at the stage of trial

Name	Types and content
depending on the legal act that regulates the defendants' rights	- provided for by the constitutions and other federal constitutions and laws
	- provided for by criminal procedure codes
depending on who exercises the defendants' rights	- delegated
depending on the time of implementation at the trial stage	- personal
	- can be exercised at the trial stage only
	- can be exercised at any time during trial
	- can be exercised at certain stages of trial only
	- are exercised under certain circumstances only
depending on the promotion of the rights of the accused by positive actions in accordance with the duties of other participants in the proceedings	- are related to the obligations of other participants in the proceedings
	- are not related to the obligations of other participants in the proceedings

Source: developed by the authors

The proposed classification of defendants' rights (Table 2) introduces a new methodological approach by distinguishing between personal and delegated rights, as well as those contingent upon the actions of other trial participants. This allows for a more precise identification of 'procedural bottlenecks' where constitutional guarantees may be compromised in practice. The Table shows that the defendants' rights can be enshrined at different levels: constitutional, criminal procedure, and federal legislation. Such a structure reflects the tendency to divide legal guarantees into universal and specialized, which in some cases can lead to their uneven realization in judicial practice.

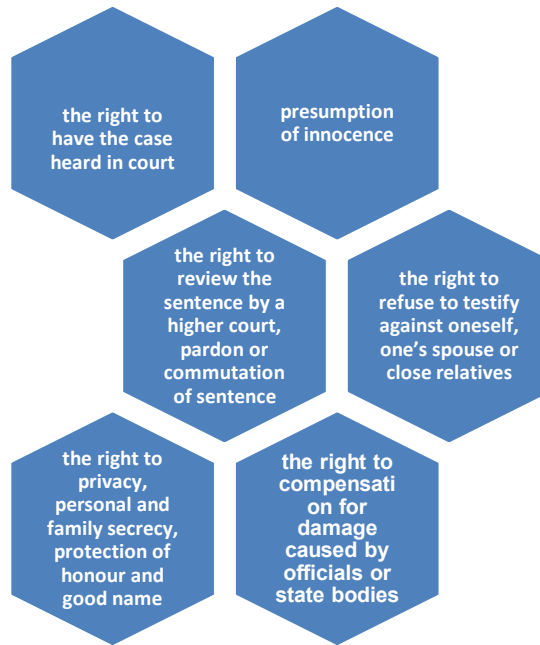
One of the key problems that arises from the analysis of the table is that the exercise of the defendants' rights often depends on the stage of the judicial process. Some rights are general and can be implemented throughout the entire consideration of the case, while others are available at certain stages only. This can cause uneven protection of the defendants' rights, especially if the procedure provides for the possibility of limiting access to certain procedural guarantees.

Attention should also be paid to the dependence of the exercise of the defendants' rights on the obligations of other participants in the process. If certain rights can be ensured only with the active participation of the court, lawyers or other subjects of the criminal process, this means that there is a risk of violation of such guarantees in the event of ineffective judicial control or improper performance of duties by the defence.

Another important aspect is the distinction of the defendants' rights depending on their legal nature — personal, delegated or those that are exercised with the assistance of other participants in the process. In this context, the question arises of the accessibility and effectiveness of mechanisms for exercising the defendants' rights where they may be limited, for example, through the use of simplified court procedures or expedited consideration of cases.

The common provisions of the Basic Laws of the states include the personal defendant's rights, which are exercised under the relevant criminal procedure codes (Figure 1):

FIGURE 1. Personal defendants' rights provided for by criminal procedure codes in accordance with the provisions of the constitutions (using the example of Germany, France, Italy, the USA, and Japan)



Source: developed by the authors

In the above list, the main attention is paid to the fundamental rights of the individual guaranteed by national constitutions and implemented in the relevant criminal procedure legislation. The above confirms the need and importance of strengthening supervision over the observance of constitutional human rights, improving and optimizing the technology of their protection and provision³¹. So, national constitutions create a legal framework in accordance with generally recognized principles and norms of international law for the effective protection of human rights and freedoms in criminal proceedings involving suspects, accused, and defendants.

³¹ Didik Suhariyanto, "Legal protection of citizens' constitutional rights in the 2024 simultaneous elections", *Jurnal Penelitian Pendidikan Indonesia* 10, no. 2 (2024): 863-872. <https://doi.org/10.29210/020243761>

The analysis of the constitutions of Germany, France, Italy, the USA, and Japan showed that each of these countries forms a system for protecting the defendants' rights based on national legal traditions, historical experience, and judicial practice. At the same time, common constitutional principles can be identified, such as the presumption of innocence, the right to legal assistance, equality of parties in the process, and the prohibition of torture.

However, the practical application of these principles faces a number of challenges. First, despite the fact that all the considered countries have similar constitutional provisions on the defendant's rights, the actual mechanism for their exercise differs significantly. For example, the USA and Germany have effective mechanisms for appeal and constitutional challenge of violations of the defendants' rights, while in some other countries the mechanisms of protection are less flexible and bureaucratically complicated.

The second important aspect is the impact of digitalization and new technologies on the observance of the defendants' rights. The use of digital evidence, in particular materials from surveillance cameras, mobile devices, and social networks, is becoming standard practice in criminal proceedings. However, such evidence is often controversial in terms of compliance with the principle of fair trial and inviolability of privacy. The study confirms that there are no unified standards at the international level for the use of digital evidence in criminal proceedings, which creates risks for the protection of the defendants' rights.

The third important issue is the correlation of national legal norms with international standards, in particular the European Convention on Human Rights. In some countries, judicial authorities actively apply the decisions of the ECHR to adjust national practice, while in other states such application is limited. This indicates the need to harmonize approaches to the defendants' rights at the level of international law.

The results of the study give grounds to identify the promising areas for further studies:

1. Research on the effectiveness of mechanisms for protecting the defendants' rights in the context of digital forensics. The issue of admissibility of digital evidence, its impact on the presumption of innocence and the right to privacy is particularly relevant.

2. Comparative analysis of the practical application of constitutional guarantees in different countries. Despite the general principles, their implementation varies significantly, which requires a deeper comparative analysis.
3. The role of international judicial bodies in ensuring the defendants' rights. In particular, it is worth analysing how the ECHR and other international institutions influence the protection of the defendants' rights in national judicial systems.
4. The possibility of creating a universal mechanism for reviewing court decisions in cases of violation of the defendants' rights. The study showed that such mechanisms differ significantly in different countries, which can lead to unequal access to justice.

So, the study confirmed the need to improve both national mechanisms for protecting the defendants' rights and international standards of justice. Further research may focus on adapting the judicial system to modern challenges, including digitalization, globalization of human rights standards, and the development of international legal cooperation.

The concept of constitutional justice regarding the rights of the accused must be understood not as a static set of rules, but as a dynamic legal mechanism that ensures the ontological priority of human dignity over the punitive power of the state. Within this framework, the trial serves as a specialized constitutional arena where the abstract principle of "fairness" is transformed into concrete procedural guarantees. Strengthening this concept requires acknowledging that constitutional justice is not merely about adherence to the letter of the law, but about maintaining a functional balance between public security and individual liberty.

In the contemporary legal landscape, constitutional justice acts as a "procedural filter" that prevents the erosion of fundamental rights under the guise of judicial efficiency. For instance, the right to a defense is not just a personal privilege of the accused but a structural necessity of the adversarial system; without it, the court loses its constitutional legitimacy. Furthermore, the modern interpretation of constitutional justice must integrate the challenges of digitalization. The "equality of arms" principle is significantly altered when the state possesses superior technological resources for digital forensics. Therefore, constitutional

justice in the 21st century necessitates a proactive defense of digital privacy and data integrity as extensions of the traditional right to a fair trial.

Ultimately, the effectiveness of constitutional justice is measured by its ability to provide “restitution of rights” rather than just a formal verdict. By positioning the defendant as a proactive subject of legal relations—rather than a passive object of prosecution—constitutional justice reinforces the social contract and ensures that the judicial process remains a tool of truth-seeking rather than mere retribution.

The role of the Constitution as the ultimate guardian of justice is manifested through the dualism of its procedural and substantive dimensions. Substantive justice, enshrined in constitutional principles, defines the essential boundaries of human rights and the legality of criminal charges, ensuring that no individual is subject to arbitrary or disproportionate punishment. Simultaneously, procedural justice serves as the indispensable mechanism for the realization of these rights, establishing the ‘due process’ standards that validate the judicial outcome. In this context, the Constitution does not merely list rights but acts as a normative shield that prevents the transformation of judicial proceedings into a formalistic exercise. The constitutional framework ensures that any interference with individual liberty is not only legally authorized but also intrinsically fair, maintaining the equilibrium between state interests and the ontological value of human dignity.

We agree with the results obtained in the study of Heri³², who notes that the dichotomous logic of the conflict between moral and political views on the rights provided for in the ECHR should be carefully reconsidered. States must ensure their own constitutional and legal security, as well as the security of the individual and society in accordance with the provisions of their constitutions and taking into account the norms of international law.

Kisiliuk³³ summarizes that the era of information technology implies the need to modify and expand universal human rights; in this

³² Corina Heri, “Deference, dignity and ‘theoretical crisis’: Justifying ecthr rights between prudence and protection”, *Human Rights Law Review* 24, no. 1 (2023): 1-19. <https://doi.org/10.1093/hrlr/ngad032>

³³ E. Kisiliuk et al., “Regulation of resource management for territorial defense in the context of domestic and international crime: International legal experience”,

sense, one of the primary tasks of the state is to recognize and protect the digital rights of citizens from possible violations. We support this opinion, because fundamental human rights guaranteed by the state and enshrined in international legal standards were codified differently at certain stages of historical development.

According to Levin, it is important to preserve social, cultural, and political achievements and legal heritage of states, as the essence of the digital revolution is fully manifested in the cultural changes taking place in society³⁴. In his study, Hesselman notes that all human rights should be developed simultaneously, but the international community does not provide either uniform standards or clear instructions for the implementation of human rights, as the states have a number of their own characteristics that are not inherent in others³⁵. We agree with the positions expressed by these researchers, as human rights expand and enrich their structure and content under the influence of various factors.

In her study, Orlova-Semenets notes that the main directions of the best qualities of a person form and improve in the era of a new humanism, which is associated with promoting the self-realization of the individual simultaneously in the interests of society and humanity³⁶. We support this position because the Constitution is the fundamental law, which, through the principles and norms contained in it, determines the direction of development of the state, including its justice system.

Laputigar³⁷ notes that the reform of criminal law and legislation aims to create a legal framework in the field of criminal justice that would meet the changing needs of society. We adhere to a similar position, as

Pakistan Journal of Criminology 16, no. 3 (2024): 1333–1348.
<https://doi.org/10.62271/pjc.16.3.1333.1348>

³⁴ Ilya Levin and Dan Mamlok, “Culture and society in the digital age”, *Information* 12, no. 2 (2021): 68. <https://doi.org/10.3390/info12020068>

³⁵ Marlies Hesselman, “International human rights law”, *Yearbook of International Disaster Law Online* 3, no. 1(2022): 536–553.
https://doi.org/10.1163/26662531_00301_028

³⁶ Inna Sements-Orlova, “Human-centered approach in new development tendencies of value-oriented public administration: Potential of education”, *Economic Affairs* 67, no. 5 (2022). <https://doi.org/10.46852/0424-2513.5.2022.25>

³⁷ Rendy Laputigar et al., “Integrating due process into the enforcement framework of Criminal Law Politics”, *Indonesian Journal of Criminal Law Studies* 9, no. 1 (2024): 133–156. <https://doi.org/10.15294/ijcls.v9i1.50293>

criminal procedure codes guarantee the rights of persons involved in criminal proceedings in practice. In his work, Walker³⁸ confirms that it is important that defendants can participate in the trial under due legal procedure, respect for human rights, and liberal democratic considerations. We support this position, because all the rights of the defendant are personal rights.

According to Kunst³⁹, since the 1960's, many countries in the Western world have reformed their criminal justice systems to improve the legal situation of participants in criminal proceedings. Fabre-Magnan notes that failure to protect fundamental values can lead to the abolition of the freedom of the social contract and, consequently, to the collapse of the legal framework necessary for the protection of constitutional values⁴⁰. We support the position of the researchers on the importance of respecting the defendants' rights as a fundamental principle of the Constitution.

However, Da Silva emphasizes that the importance of the latter is exaggerated, so it is worth using practical approaches to the potential benefits of human rights without creating an excessively expanded register of rights or making firm theoretical commitments to the nature of law⁴¹. We do not support this view of the researcher, as human rights are based on the concepts of justice, equality and freedom, and national and international law cannot contradict fundamental human rights.

³⁸ Charlotte Walker, "The pains of going to court: Unrepresented defendants' ability to effectively participate in court proceedings", *Criminology & Criminal Justice* (2024). <https://doi.org/10.1177/17488958241228176>

³⁹ Maarten Kunst et al., "The impact of victim impact statements on legal decisions in criminal proceedings: A systematic review of the literature across jurisdictions and decision types", *Aggression and Violent Behavior* 56 (2021): 101512. <https://doi.org/10.1016/j.avb.2020.101512>

⁴⁰ Muriel Fabre-Magnan, "Constitutional values and freedom of contract", *European Review of Contract Law* 20, no. 3 (2024): 207–224. <https://doi.org/10.1515/ercl-2024-2009>

⁴¹ Michael Da Silva, "Legal doctrine as human rights 'practice'", *Global Constitutionalism* 12, no. 1 (2023): 106-132. <https://doi.org/10.1017/S2045381722000168>

Conclusions

There are significant differences in the analysed provisions of the constitutions of Germany, France, Italy, Japan, and the USA. At the same time, the constitutions of these countries contain common important provisions on the defendants' rights and freedoms, namely: the right to a fair trial, the prohibition of torture and extraordinary punishments, freedom from arbitrary arrest and unjustified criminal prosecution. The concept of the defendant's constitutional right to defence must be considered as a set of social opportunities for a person to use any means not prohibited by law to protect his or her interests in the field of criminal justice.

This concept implies the right to judicial protection of violated rights and interests, as well as a system of legally provided opportunities for effective protection against accusation (suspicion) in criminal proceedings.

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Acknowledgment

The authors of the research did not receive any support during conducting the research.

Funding Information

The authors of the research did not receive any funding during conducting the research.

Conflicting Interest Statement

The authors state that there is no conflict of interest in the publication of this article.

Publishing Ethical and Originality Statement

All authors declared that this work is original and has never been published in any form and in any media, nor is it under consideration for publication in any journal, and all sources cited in this work refer to the basic standards of scientific citation.